

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RAYMOND PLUMMER,	:	Civil No. 03-4797 (RBK)
Plaintiff,	:	
v.	:	<u>OPINION</u>
JOSE MATOS,	:	
Defendant.	:	

APPEARANCES:

RAYMOND PLUMMER, #117955, Plaintiff Pro Se
Camden County Correctional Facility
P.O. Box 90431
Camden, New Jersey 08101

KUGLER, District Judge:

Plaintiff Raymond Plummer seeks to bring this action in forma pauperis without prepayment of fees pursuant to 28 U.S.C. § 1915. The Court (1) grants Plaintiff's application to proceed in forma pauperis; (2) directs the Clerk to file the Complaint without pre-payment of the filing fee; (3) assesses the \$250.00 filing fee against Plaintiff; (4) directs the agency having custody of Plaintiff to forward an initial partial filing fee to the Clerk from Plaintiff's prison account; and (5) directs the agency having custody of Plaintiff to forward payments from Plaintiff's prison account to the Clerk each subsequent month that the amount in the account exceeds \$10.00, until the \$250.00 filing fee is paid in full. See 28 U.S.C. § 1915(a), (b). Having thoroughly reviewed Plaintiff's allegations, the Court dismisses the Complaint.

I. BACKGROUND

Plaintiff asserts that on September 17, 2003, as he entered his housing unit at Camden County Correctional Facility, inmate Jose Matos attacked him. Plaintiff alleges that Matos stabbed him with a sharp object. He asserts that Corrections Officer Mauley intervened, applying mace to subdue Matos. Plaintiff states that he was taken to a hospital and treated with stitches. He seeks relief, including damages and criminal prosecution of Matos.

II. LEGAL STANDARD

The in forma pauperis statute, as amended by the Prison Litigation Reform Act (?PLRA”), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996), requires the Court, prior to docketing or as soon as practicable after docketing, to review a complaint in a civil action in which a plaintiff is proceeding in forma pauperis or a prisoner seeks redress against a governmental employee or entity. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A. The PLRA requires the Court to sua sponte dismiss any claim if the Court determines that it is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. Id. A pro se complaint is held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

A claim is frivolous if it "lacks even an arguable basis in law" or its factual allegations describe "fantastic or delusional scenarios." Neitzke v. Williams, 490 U.S. 319, 328 (1989); see also Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990). "Given the Federal Rules' simplified standard for pleading, '[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" "

Swierkiewicz v. Soreman, 534 U.S. 506, 514 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

III. DISCUSSION

A. Federal Claims

A district court may exercise jurisdiction over “Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority.” U.S. Const. art. III., § 2; see also 28 U.S.C. § 1331. Specifically, 42 U.S.C. § 1983 authorizes a person to seek redress for a violation of his or her federal rights by a person who was acting under color of state law. To recover under 42 U.S.C. § 1983, a plaintiff must show two elements: (1) a person deprived him or caused him to be deprived of a right secured by the Constitution or laws of the United States, and (2) the deprivation was done under color of state law.¹ See West v. Atkins, 487 U.S. 42, 48 (1988); Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970); Sample v. Diecks, 885 F.2d 1099, 1107 (3d Cir. 1989).

The problem with Plaintiff’s § 1983 claim is that, on the facts alleged in the Complaint, Jose Matos was not acting under color of state law when he assaulted Plaintiff. “[T]he under-

¹ Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" American Manufacturers Mutual Ins. Co. v. Sullivan, 119 S. Ct. 977, 985 (1999) (quoting Shelley v. Kraemer, 334 U.S. 1, 13 (1948)). State action exists where the conduct allegedly causing the deprivation of a federal right is "fairly attributable to the State." Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982). Under these circumstances, Plaintiff's § 1983 claim against Matos is dismissed for failure to state a claim upon which relief may be granted.

B. State Claims

The Complaint may state a claim under state tort law against Matos. "Supplemental jurisdiction allows federal courts to hear and decide state-law claims along with federal-law claims when they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." Wisconsin Dept. of Corrections v. Schacht, 524 U.S. 381, 387 (1998) (citation and internal quotation marks omitted). Where a district court has original jurisdiction pursuant to 28 U.S.C. § 1331 over federal claims and supplemental jurisdiction over state claims pursuant to 28 U.S.C. § 1337(a), the district court has discretion to decline to exercise supplemental jurisdiction if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1337(c)(3); Growth Horizons, Inc. v. Delaware County, Pennsylvania, 983 F.2d 1277, 1284-1285 (3d Cir. 1993). In exercising its discretion, ?the district court should take into account generally accepted principles of judicial economy, convenience, and fairness to the litigants.'" Growth Horizons, Inc., 983 F.2d at 1284 (quoting United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)). Where the federal claims are dismissed at an early stage in the litigation, courts generally decline to exercise supplemental jurisdiction over state

claims. United Mine Workers v. Gibbs, 383 U.S. at 726; Growth Horizons, Inc., 983 F.2d at 1284-1285.

In this case, the Court is dismissing every claim over which it had original subject matter jurisdiction at an early stage in the litigation and declines to exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1337(c)(3).

IV. CONCLUSION

For the reasons set forth above, the Court grants Plaintiff's application to file the Complaint in forma pauperis, dismisses the federal claims, and declines to exercise supplemental jurisdiction over claims arising under state law.

s/Robert B. Kugler
ROBERT B. KUGLER, U.S.D.J.

DATED: June 21, 2005